

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 MEYERS, NAVE, RIBACK, SILVER & WILSON
5 555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
6 Facsimile: (510) 444-1108

7 Attorneys for Defendants and Respondents
City of San Jose and Debra Figone

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 JOHN MUKHAR, DALE DAPP, JAMES
12 ATKINS, WILLIAM BUFFINGTON and
KIRK PENNINGTON,

13 Plaintiffs and Petitioners,

14 v.

15 CITY OF SAN JOSE, DEBRA FIGONE, in
her official capacity as City Manager of the
16 CITY OF SAN JOSE, and DOES 1 through
15,

17 Defendants and Respondents.

18
19 THE BOARD OF ADMINISTRATION FOR
THE 1975 FEDERATED CITY
20 EMPLOYEES' RETIREMENT PLAN,

21 Necessary Party in Interest.
22
23
24
25
26
27
28

Case No. 112CV226574

112CV225926
112CV226570
112CV225928
112CV227864
**DEFENDANT CITY OF SAN JOSE'S
NOTICE OF MOTION AND MOTION TO
STAY CONSOLIDATE AND STAY**

Hearing:

Date: August 23, 2012

Time: 9:00 a.m.

Dept.: 2

Judge: Hon. Patricia Lucas

Complaint Filed: June 6, 2012

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on August 23, 2012 at 9:00 a.m. in Department 2
3 before the Honorable Judge Patricia Lucas, or as soon thereafter as the matter may be heard, in
4 Santa Clara County Superior Court at its Downtown Superior Court, 191 North First Street, San
5 Jose, California, 95113, Defendant City of San Jose will move, and hereby does move, that the
6 five state-court actions listed below be consolidated for all purposes under the case number of *San*
7 *Jose Police Officers' Ass'n v. City of San Jose, et al.*, Santa Clara County Superior Court Case No.
8 112CV225926. This motion is made pursuant to California Code of Civil Procedure section 1048
9 and California Rule of Court, rule 3.350.

10 *San Jose Police Officers' Ass'n v. City of San Jose, et al.*;
11 Santa Clara County Superior Court Case No. 112CV225926.

12 *Robert Sapien, et al. v. City of San Jose, et al.*;
13 Santa Clara County Superior Court Case No. 112CV225928.

14 *Teresa Harris, et al. v. City of San Jose, et al.*;
15 Santa Clara County Superior Court Case No. 112CV226570.

16 *John Mukhar, et al. v. City of San Jose, et al.*; and
17 Santa Clara County Superior Court Case No. 112CV226574.

18 *AFSCME Local 101 v. City of San Jose, et al.*;
19 Santa Clara County Superior Court Case No. 112CV227864.

20 Defendant the City of San Jose will move, and hereby does move, for the Court to exercise
21 its inherent discretionary authority to stay the five state-court actions listed above so that the
22 parties may litigate the City's Federal Action currently pending in the San Jose Division of U.S.
23 District Court, Northern District of California, entitled: *City of San Jose v. San Jose Police*
24 *Officers' Ass'n, et al.*, Northern District Case No. 5:12-cv-02904-LHK.

25 Pursuant to California Rules of Court, rule 3.350, each of the five actions listed above
26 involves the following parties and counsel listed below:
27
28

//

//

//

1 *San Jose Police Officers' Ass'n v. v. City of San Jose, et al.;*
2 Santa Clara County Superior Court Case No. 112CV225926.

3 **Parties**

4 **Plaintiff**
5 San Jose Police Officers
6 Association

3 **Counsel**

4 Gregg M. Adam
5 Jonathan Yank
6 Gonzalo Martinez
7 Jennifer Stoughton
8 **CARROLL, BURDICK &**
9 **MCDONOUGH**
10 44 Montgomery Street, Suite 400
11 San Francisco, CA 94104

8 **Defendant**
9 City of San Jose

8 Arthur A. Hartinger
9 MEYERS, NAVE, RIBACK, SILVER &
10 WILSON
11 555 12th Street, Suite 1500
12 Oakland, California 94607

11 **Defendant**
12 Board of Administrators for Police
13 and Fire Department Retirement Plan
14 of City of San Jose¹

11 Harvey L. Leiderman
12 Reed Smith, LLP
13 101 Second Street
14 Suite 1800
15 San Francisco, CA 94105

16 *Robert Sapien, et al. v. City of San Jose, et al.;*
17 Santa Clara County Superior Court Case No. 112CV225928.

18 **Parties**

18 **Plaintiffs/Petitioners**
19 Robert Sapien
20 Mary McCarthy
21 Thanh Ho
22 Randy Sekany
23 Ken Heredia

18 **Counsel**

18 John McBride
19 Christopher E. Platten
20 Mark S. Renner
21 **WYLIE, MCBRIDE, PLATTEN & RENNER**
22 2125 Canoas Garden Avenue, Suite 120
23 San Jose, CA 95125

24 ¹ The City contends that its retirement boards, named through the state-court actions as either a
25 defendant or a necessary parties in interest, are constituent boards of the City of San Jose. As of
26 today, the City does not believe that the retirement boards have separately filed an answer or
27 otherwise appeared in any of the state-court actions with the exception of *POA v. City San Jose, et*
28 *al.*, Case No. 112CV225926. Mr. Liederman attended on behalf of the Board of Administration
for Police and Fire Department Retirement Plan at Plaintiff POA's initial ex parte TRO hearing.

1 **Defendants/Respondents**

2 City of San Jose
3 San Jose City Manager Debra Figone²

Arthur A. Hartinger
MEYERS, NAVE, RIBACK, SILVER &
WILSON
555 12th Street, Suite 1500
Oakland, California 94607

5 **Necessary Party in Interest**

6 Board of Administrators for Police
7 and Fire Department Retirement Plan
8 of City of San Jose

Harvey L. Leiderman
REED SMITH LLP
101 Second Street
Suite 1800
San Francisco, CA 94105

9
10 *Teresa Harris, et al. v. City of San Jose, et al.;*
11 Santa Clara County Superior Court Case No. 112CV226570.

11 **Parties**

Counsel

12 **Plaintiffs/Petitioners**

13 Teresa Harris
14 Jon Reger
15 Moses Serrano

John McBride
Christopher E. Platten
Mark S. Renner
WYLIE, MCBRIDE, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125

16 **Defendants/Respondents**

17 City of San Jose
18 San Jose City Manager
19 Debra Figone

Arthur A. Hartinger
MEYERS, NAVE, RIBACK, SILVER &
WILSON
555 12th Street, Suite 1500
Oakland, California 94607

20 **Necessary Party in Interest**

21 Board of Administrators for Police
22 and Fire Department Retirement Plan
23 of City of San Jose

Harvey L. Leiderman
REED SMITH LLP
101 Second Street
Suite 1800
San Francisco, CA 94105

24
25 ² City Manager Figone is not a defendant in *San Jose POA v. City of San Jose, et al.*, Case No.
26 112CV225926, the action in which defendant City of San Jose brings this motion to consolidate
27 and stay. The same counsel represent both the City and the City Manager in the five state-court
28 actions identified herein. City Manager Figone joins the City's motion with respect to every case
in which she is a party.

1 *John Mukhar, et al. v. City of San Jose, et al.;*
2 Santa Clara County Superior Court Case No. 112CV226574.

3 **Parties**

Counsel

4 **Plaintiffs/Petitioners**

5 John Mukhar
6 Dale Dapp
7 James Atkins
8 William Buffington
9 Kirk Pennington

John McBride
Christoph
Mark S. Renner
WYLIE, MCBRIDE, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125

7 **Defendants/Respondents**

8 City of San Jose
9 San Jose City Manager
10 Debra Figone

Arthur A. Hartinger
MEYERS, NAVE, RIBACK, SILVER &
WILSON
555 12th Street, Suite 1500
Oakland, California 94607

11 **Necessary Party in Interest**

12 Board of Administrators for Police
13 and Fire Department Retirement Plan
14 of City of San Jose

Harvey L. Leiderman
Reed Smith, LLP
101 Second Street
Suite 1800
San Francisco, CA 94105

15 *AFSCME Local 101 v. City of San Jose, et al.;*

16 Santa Clara County Superior Court Case No. 112CV227864.

17 **Parties**

Counsel

18 **Plaintiff/Petitioner**

19 American Federation of State, County
20 and Municipal Employees Local 101

Teague P. Paterson
Vishtasp M. Soroushian
BEESON, TAYER AND BODINE, APC.
Ross House, 2nd Floor
483 Ninth Street
Oakland, CA 94607

21 **Defendants/Respondents**

22 City of San Jose
23 San Jose City Manager
24 Debra Figone

Arthur A. Hartinger
MEYERS, NAVE, RIBACK, SILVER &
WILSON
555 12th Street, Suite 1500
Oakland, California 94607

25 **Necessary Party in Interest**

26 Board of Administrators for Police
27 and Fire Department Retirement Plan
28 of City of San Jose

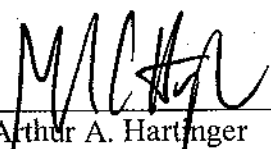
Harvey L. Leiderman
Reed Smith, LLP
101 Second Street
Suite 1800
San Francisco, CA 94105

1 Pursuant to California Rules of Court, rule 3.350(a)(2), the City's supporting
2 memorandum, declaration, and proposed order will be filed only in Dept. 2 in case *San Jose*
3 *Police Officers' Ass'n v. City of San Jose, et al.*, Santa Clara County Superior Court Case No.
4 112CV225926. All documents will be served on all parties.

5
6 DATED: August 1, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

7
8
9 By: _____


Arthur A. Hartinger
Linda M. Ross
Jennifer L. Nock
Michael C. Hughes
Attorneys for Defendant
City of San Jose

10
11
12
13 1943940.1
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28